



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Power Ten, Inc.--Request for Reconsideration

File: B-236725.2

Date: January 29, 1990

DIGEST

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

DECISION

Power Ten, Inc., requests reconsideration of our decision, Power Ten, Inc., B-236725, Dec. 18, 1989, 89-2 CPD ¶ , denying its protest of the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAB07-89-B-N002, issued by the U.S. Army Communications-Electronics Command (CECOM), Fort Monmouth, New Jersey, for power supplies.

We deny the request for reconsideration.

The IFB at issue solicited prices for a basic quantity of 61 power supplies and option unit prices for quantities "up to but not exceeding 300 percent" of the basic quantity. Bidders were advised that the government would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement, but that evaluation of options would not obligate the government to exercise the option(s).

Power Ten submitted a bid which included the note "100 percent min." next to its option price. CECOM subsequently rejected Power Ten's bid on the ground that the note limited the rights of the government by qualifying the minimum option quantity the government could order.

We have held that CECOM correctly rejected Power Ten's bid as nonresponsive because Power Ten's restriction of the minimum quantity of supplies that the government could order under the option was inconsistent with the IFB option provisions, which vested the contracting officer, not the contractor, with the unilateral legal right to make the

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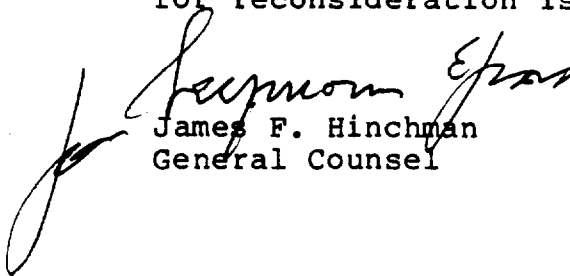
determination regarding the quantity of additional supplies to be ordered under the option. Since Power Ten's bid significantly affected the legal rights of the government and the obligations of the contractor to order and accept option quantities, we have held that its bid was properly rejected as nonresponsive.

In its request for reconsideration, Power Ten objects that our decision neglected to address a case it cited in support of its position that its bid was responsive. Power Ten argues that Walsky Constr. Co., B-216737, Jan. 29, 1985, 85-1 CPD ¶ 117, supported its argument that it was permissible to qualify the minimum option quantity the government could order.

We did not discuss Walsky in our decision because it was clearly distinguishable from the factual situation at issue. In Walsky, the bidder conditioned award on receipt of a minimum total schedule price of \$500,000. We have held that the bidder's minimum limitation did not preclude acceptance of its bid, reasoning that where a solicitation permits multiple awards and does not expressly prohibit "all or none" or similarly restricted bids, a bidder may properly condition award on receipt of all or a specified combination of line items.

The present situation does not involve a case where a bidder properly conditioned award on a restricted combination of schedule items in the absence of a solicitation provision prohibiting such bidding. Rather, it involves a bidder's restriction of the minimum option quantity the government can order, a restriction which is inconsistent with the IFB option provision which vests the contracting officer with the unilateral right to make the determination regarding the quantity of additional supplies to be ordered under the option.

Since Power Ten has not presented evidence that our original decision was based on legal or factual errors, the request for reconsideration is denied. 4 C.F.R. § 21.12(a) (1989).



James F. Hinchman
General Counsel